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THE INTERNATIONAL REFUGEE ASSISTANCE PROJECT
MUSLIM ADVOCATES
THE ACLU OF NORTHERN CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, MUSLIM
ADVOCATES, and THE ACLU OF
NORTHERN CALIFORNIA,

Plaintiffs,

vs.

FEDERAL BUREAU OF
INVESTIGATION, U.S.
DEPARTMENT OF HOMELAND
SECURITY, U.S. DEPARTMENT
OF JUSTICE, and U.S.
DEPARTMENT OF STATE,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR VIOLATION
OF THE FREEDOM OF INFORMATION
ACT, 5 U.S.C. § 552 et seq.**

INTRODUCTION

1
2 1. The Trump Administration has radically restricted the admission of refugees
3 to our country. To support its policies, the Administration has sought to demonize refugees
4 by repeatedly making unfounded accusations that refugees present a threat to national
5 security. In turn, refugees report being targeted for increased surveillance and criminal
6 investigation. On February 25, 2019, Plaintiffs, a coalition of organizations concerned
7 about these developments, submitted a request under the Freedom of Information Act to the
8 Federal Bureau of Investigation (“the FBI”), the U.S. Department of Homeland Security
9 (“DHS”), the U.S. Department of Justice (“DOJ”), and the U.S. Department of State
10 (“DOS”) (collectively, “Defendants”) seeking information related to the targeting of
11 refugees resettled in the United States.

12 2. Plaintiffs’ FOIA request seeks, *inter alia*, policies, communications, and
13 data pertaining to the surveillance and criminal investigation of refugees in the United
14 States. Plaintiffs’ request stemmed from concern over the Administration’s longstanding
15 and publicly expressed antagonism towards refugees, beginning with President Trump’s
16 campaign promise to ban refugees and Muslims from entering this country and continuing
17 with his multiple attempts to severely limit and in some instances outright halt refugee
18 admissions. The Administration has frequently claimed that refugees are national security
19 threats and has made the unsubstantiated claim that hundreds of refugees are under
20 investigation for potential terrorism-related activities.

21 3. Plaintiffs have no doubt that recent drops in refugee admissions, and in
22 particular admissions of Muslim refugees, are driven by the current Administration’s
23 virulent anti-refugee sentiment. Through their request Plaintiffs sought to understand the
24 pernicious effects of government surveillance and investigation of refugee communities and
25 requested information desperately needed to quell the fear and uncertainty that the
26 Administration’s rhetoric has created in these communities. Plaintiffs’ requests are limited
27 in scope, based on detailed definitions, and seek records from a defined period.

1 10. Plaintiff Muslim Advocates (“MA”) is a national civil rights organization
2 working in the courts, in the halls of power and in communities to halt bigotry in its tracks
3 and ensure that all Americans may live free from hate and discrimination.

4 11. Plaintiff the ACLU of Northern California (“ACLU-NC”) is an affiliate of
5 the American Civil Liberties Union, a national, non-profit, non-partisan organization with
6 the mission of protecting civil liberties from government incursions, safeguarding basic
7 constitutional rights, and advocating for open government. ACLU-NC is established under
8 the laws of the state of California and is headquartered in San Francisco, California. ACLU-
9 NC has approximately 169,000 members. In support of its mission, ACLU-NC uses its
10 communications department to disseminate to the public information relating to its mission,
11 through its website, newsletters, in-depth reports, and other publications.

12 12. Defendant the FBI is a federal agency within the meaning of 5 U.S.C. §
13 552(f). The FBI is responsible for both investigative activities and law enforcement to
14 promote U.S. national security interests. The FBI is a component agency of Defendant
15 DOJ. The FBI has possession of, and control over, the information Plaintiffs seek through
16 their FOIA Request.

17 13. Defendant DHS is a federal agency within the meaning of 5 U.S.C. § 552(f).
18 DHS is the executive department responsible for enforcing federal immigration laws. DHS
19 has possession of, and control over, the information Plaintiffs seek through their FOIA
20 Request.

21 14. Defendant DOJ is an executive department of the United States federal
22 government and a federal agency within the meaning of 5 U.S.C. § 552(f). DOJ is
23 responsible for enforcing the law and administration of justice in the United States. DOJ
24 has possession of, and control over, the information Plaintiffs seek through their FOIA
25 Request.

26 15. Defendant DOS is a cabinet department of the United States federal
27 government and a federal agency within the meaning of 5 U.S.C. § 552(f). DOS’s stated
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1 vision is to promote and demonstrate democratic values and advance a free, peaceful, and
2 prosperous world. DOS's Bureau of Population, Refugees, and Migrations manages the
3 U.S. Refugee Admissions Program in cooperation with Defendant DHS. DOS has
4 possession of, and control over, the information Plaintiffs seek through their FOIA Request.

5 **STATUTORY FRAMEWORK**

6 16. The Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") requires all
7 federal agencies to search for and disclose government records which are requested by a
8 member of the public, subject to certain narrow exceptions. 5 U.S.C. §§ 552(a)(3)(A), (C);
9 552(b)(1)-(b)(9).

10 17. Compliance with FOIA's disclosure obligations supports government
11 transparency and accountability. Federal agencies must respond to FOIA requests within
12 twenty business days after receipt, although the deadline may be extended an additional ten
13 working days with written notice "[i]n unusual circumstances." *Id.* § 552(a)(6)(A)-(B).

14 18. The agency's written response must state whether it will comply with the
15 FOIA request, indicate the reasons for that determination, and provide information
16 regarding the process by which a requester may appeal an agency's adverse determination.
17 *Id.* § 552(a)(6)(A)(i).

18 19. A FOIA requestor's administrative remedies are deemed exhausted due to an
19 agency's failure to properly respond within FOIA's statutory time limits. *Id.*
20 § 552(a)(6)(C)(i).

21 20. Upon an agency's failure to meet its obligations, a district court may order
22 the production of those records responsive to the FOIA request. *Id.* § 552(a)(4)(B).

FACTS

The Trump Administration's Anti-Refugee Rhetoric and Antagonism Towards Refugees

21. Starting even before he was elected, President Trump expressed anti-refugee sentiment and antagonized refugees living in and coming to this country. On the campaign trail, then-candidate Trump promised to ban refugees and Muslims entirely. In his first week in office, President Trump signed Executive Order 13769, which suspended the U.S. Refugee Admissions Program for 120 days, indefinitely barred Syrian refugees, and attempted to slash the refugee admissions cap for Fiscal Year 2017 in half.

22. Following numerous successful legal challenges, the Administration replaced Executive Order 13769 with Executive Order 13780. This new order, among other things, again suspended all refugee admissions for 120 days. When that period ended, the Administration imposed *another* 90-day ban on refugees from eleven countries (nine of which are reported to be predominantly Muslim) and indefinitely suspended processing and admission of all Follow-to-Join refugees. Plaintiffs have been involved in various court challenges to each iteration of President Trump's refugee bans.

23. Not surprisingly, the Administration's actions have severely limited refugee admissions. The number of refugees admitted under the Trump Administration has plummeted, and disproportionately so for Muslim refugees. The President's latest Report to Congress for Fiscal Year 2020 proposed an unprecedented low refugee admissions goal of less than 20 percent of the historical average.

24. Plaintiffs are concerned that recent drops in refugee admissions, and in particular admissions of Muslim refugees, are driven by the Trump Administration's fierce antagonism towards refugees, which is reflected in its virulent anti-refugee rhetoric. The Trump Administration has frequently claimed that refugees are national security threats, has claimed that hundreds of refugees are being investigated for potential terrorism-related activities, and has suggested that refugees should be under criminal surveillance.

Plaintiffs' FOIA Request

25. On February 25, 2019 Plaintiffs submitted a FOIA request (the "Request") to Defendants via certified mail. A copy of Plaintiffs' FOIA request is attached hereto as Exhibit A.

26. Through 12 individually numbered requests, the Request sought records pertaining to the criminal investigation and surveillance of refugees and any related communications; records relating to various forms of FBI intelligence gathering about refugees living in the U.S.; records relating to then-Attorney General Jeff Session's March 6, 2017 statement that "more than 300 people, according to the FBI, who came as refugees are under an FBI investigation;" records and policies pertaining to how surveillance or criminal investigations of refugees residing in the United States affects their applications for refugee status, adjustment of status, or citizenship; and records provided by DHS or DOS to the Senate Judiciary Committee in response to an August 20, 2018 letter from Sen. Chuck Grassley. Plaintiffs also sought a fee waiver. *See id.*

27. The Request included detailed definitions that clarified the scope of individuals requests, and was limited in time, seeking records only from the relevant time frame of January 19, 2017 to the present. *See id.*

28. Plaintiffs believe the requested records will significantly contribute to the public understanding of the government's treatment of and policies pertaining to refugees and will help dispel confusion and fear in refugee and other immigrant communities, which has resulted from the Administration's explicitly anti-refugee rhetoric and policies.

Defendants' Responses and Plaintiffs' Appeals

DHS's Constructive Denial and Plaintiffs' Appeal

29. DHS received the Request on March 1, 2019 and acknowledged receipt two weeks later on March 18, 2019. DHS assigned the Request reference number 2019-HQFO-00491. A copy of DHS's March 18 acknowledgment letter is attached hereto as Exhibit B.

30. DHS's acknowledgment letter asserted that it had determined that the Request was "too broad in scope or did not specifically identify" the records sought. The letter did not, however, identify which requests were too broad as opposed to which requests did not specifically identify the records sought. Although DHS stated that its response was "not a denial" of the Request, DHS suggested that Plaintiffs resubmit their Request, and informed Plaintiffs that their Request would be administratively closed if they did not do so within 30 days. DHS did not respond to Plaintiffs' request for a fee waiver. *See Exhibit B.*

31. Plaintiffs appealed DHS's determination and denial of their request for a fee waiver via email and certified mail. A copy of Plaintiffs' appeal letter to DHS is attached as Exhibit C.

32. In their appeal, Plaintiffs indicated that they were open to working with DHS to understand the specific information it needed to allow a search of agency records that would result in the identification of responsive information. Plaintiffs also indicated that they were open to reformulating portions of the Request with DHS's input. *See Exhibit C.*

33. Three months later, on September 17, 2019, DHS² partially affirmed its original determination. A copy of DHS's appeal response is attached hereto as Exhibit D. DHS affirmed its determination that requests 1, 2, 3, 6, 7, 8, 9, 10, and 11 are "overbroad and not reasonably described." It remanded requests 4, 5, and 12 for further consideration within 30 days. *See Exhibit D.*

34. Despite DHS's unsupported opinion, *all* of Plaintiffs' requests are narrow in scope and sufficiently detail the records sought such that DHS should be able to locate them with reasonable effort. Moreover, DHS provided no basis – beyond inapplicable, boilerplate recitations of FOIA's specificity requirement – for its determination that

² The United States Coast Guard Office of the Chief Administrative Law Judge rendered the official appeal decision on behalf of DHS pursuant to a memorandum of understanding between those agencies. For simplicity, Plaintiffs refer to "DHS" in describing the appeal response.

1 Plaintiffs' requests 1, 2, 3, 6, 7, 8, 9, 10, and 11 are insufficient. Accordingly, DHS has
 2 violated FOIA's mandate to release agency records to the public by failing to release the
 3 records as Plaintiffs specifically requested in requests 1, 2, 3, 6, 7, 8, 9, 10, and 11. 5
 4 U.S.C. §§ 552(a)(3)(A).

5 35. As of the filing date of this Complaint DHS has not made a revised
 6 determination on requests 4, 5, and 12. Plaintiffs do not currently dispute DHS's appeal
 7 determination as to those requests. As of the filing date of this Complaint, DHS has not
 8 made a revised determination on requests 4, 5, and 12, despite the expiration of its 30-day
 9 deadline by which to do so. By failing to timely make a further determination on requests
 10 4, 5, and 12, DHS has constructively denied those requests. Accordingly, DHS has violated
 11 FOIA's mandate to release agency records Plaintiffs specifically requested in requests 4, 5,
 12 and 12. 5 U.S.C. §§ 552(a)(3)(A). Due to DHS's failure to adequately support its
 13 disclosure determinations as to individual requests 1, 2, 3, 6, 7, 8, 9, 10, and 11 and its
 14 failure to timely make further determinations as to individual requests 4, 5, and 12 Plaintiffs
 15 are entitled to relief against DHS to enforce each of the individual requests in the Request.

16 The FBI's Denials and Plaintiffs' Appeal

17 36. On March 11, 2019 the FBI acknowledged receipt of Plaintiffs' Request and
 18 assigned each individually numbered request a separate reference number.³ For all but one
 19 of the requests, FBI determined that the requests either did not "contain enough descriptive
 20 information to permit a search of [its] records," or were "not searchable." The FBI
 21 indicated that requests 4 and 5 (Reference No. 1430692-000) had been received for
 22 processing. The FBI also indicated that Plaintiffs' request for a fee waiver was under
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 25 ³ The FBI assigned the requests reference numbers as follows: NFP-105033 (request 1),
 26 NFP-105035 (request 2), NFP-105036 (request 3), NFP-105037 (request 6(a)), NFP-
 27 105038 (request 6(b)-(c)), NFP-105039 (request 6(d)-(e)), NFP-105040 (request 6(f)-(g)),
 28 NFP-105041 (request 7), NFP-105042 (request 8), NFP-105043 (request 9), NFP-105044
 (request 10), and NFP-104045 (request 11). *See* Exhibits E-1 to E-3; E-5 to E-13,
 respectively. The FBI assigned requests 4 and 5 reference number 1430692-000. *See*
 Exhibit E-4. The FBI failed to respond to request 12.

1 consideration. Copies of the FBI's acknowledgement letters are attached hereto as Exhibits
2 E-1-E-13.

3 37. Plaintiffs appealed the FBI's determinations as to requests 1-3 and 6-12 via
4 email and certified mail on May 30, 2019. A copy of Plaintiffs' appeal letter to the FBI is
5 attached hereto as Exhibit F.

6 38. As with their appeal to DHS, Plaintiffs indicated that they were open to
7 working with the FBI to understand the specific information it needed to allow a search of
8 its records that would result in the identification of responsive information. Plaintiffs also
9 indicated that they were open to reformulating the requests that the FBI indicated were "not
10 searchable" and asked that the FBI contact them to discuss such reformulation. *See* Exhibit
11 F.

12 39. On July 12, 2019 the Department of Justice's Office of Information Policy
13 ("DOJ OIP") summarily affirmed the FBI's original withholding of records due to its
14 determination that requests 1-3 and 6-12 lack "sufficient identifying information that could
15 be used by the FBI to conduct a search of its database and file systems" in part because the
16 records "are not indexed by the FBI in the manner described." *See* Exhibit G, 7/12/2019
17 FBI Appeal Denial.

18 40. DOJ-OIP provided no further explanation of what sort of information the
19 FBI would need to search its databases and no basis – beyond inapplicable, boilerplate
20 recitations of FOIA's specificity requirement – for its determination that Plaintiffs' requests
21 1-3 and 5-12 are insufficient. Accordingly, the FBI has violated FOIA's mandate to release
22 agency records to the public by failing to release the records as Plaintiffs specifically
23 requested in individual requests 1-3 and 6-12. 5 U.S.C. § 552(a)(3)(A).

24 41. On August 29, 2019 DOJ OIP wrote to Plaintiffs regarding request 4, FBI
25 Reference No. 1430692 (requests 4 and 5). Although Plaintiffs had not appealed the FBI's
26 response as to these requests DOJ-OIP indicated it was writing in response to an appeal and
27 assured Plaintiffs that "the FBI is currently processing your clients' request." DOJ-OIP did
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1 not state whether the FBI had made a determination on requests 4 and 5 and provided no
2 timeline for when it may do so. The letter made no reference to determinations on
3 individual requests that Plaintiffs *did* appeal. *See* Exhibit H, 8/29/2019 DOJ-OIP Letter.

4 42. According to the FBI's online FOIA status portal, the FBI has "identified
5 potential responsive information" for requests 4 and 5 and "awaits assignment to a
6 Government Information Specialist (GIS) for further processing." As of the date of the
7 filing of this Complaint, the FBI has provided no further information regarding the status of
8 request 4 of the Request and has made no determination on request 4. By failing to timely
9 make a determination on requests 4 and 5 of the Request, the FBI has constructively denied
10 request 4.

11 43. Plaintiffs have therefore exhausted the applicable administrative remedies
12 with respect to requests 4 and 5 under 5 U.S.C. §§ 552(a)(6)(A) and 552(a)(6)(C).

13 44. By failing to timely respond to and constructively denying requests 4 and 5
14 of the Request the FBI has violated FOIA's mandate to release agency records to the public
15 by failing to release the records as Plaintiffs specifically requested in individual requests 4
16 and 5. 5 U.S.C. § 552(a)(3)(A).

17 45. Due to the FBI's failure to adequately support its disclosure determinations
18 as to individual requests 1, 2, 3, 6, 7, 8, 9, 10, 11, and 12, and its failure to timely make a
19 determination as to individual requests 4 and 5, Plaintiffs are entitled to relief against FBI to
20 enforce each of the individual requests in the Request.

21 DOS's Constructive Denial and Plaintiffs' Appeal

22 46. On June 16, 2019, after having received no response from DOS, Plaintiffs
23 appealed DOS's constructive denial of the Request and their request for a fee waiver. A
24 copy of Plaintiff's appeal letter to DOS is attached hereto as Exhibit I.

25 47. On July 3, 2019 DOS responded to Plaintiffs' appeal and assigned the
26 Request case number F-2019-04119. DOS confirmed that the Request was "being
27 processed" but provided no information regarding the status of the Request and made no
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1 determination on the Request. DOS also contended that the Request was “not subject to
2 appeal” because “no specific material has been denied.” *See* Exhibit J, DOS Appeal
3 Response.

4 48. As of the date of the filing of this Complaint, DOS has provided no further
5 information regarding the status of the Request. By failing to make a determination on the
6 Request under the FOIA’s prescribed timeline, DOS has constructively denied it.

7 49. Plaintiffs have therefore exhausted the applicable administrative remedies
8 with respect to their Request to DOS. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(C).

9 50. By failing to timely respond to and constructively denying the Request in its
10 entirety DOS has violated FOIA’s mandate to release agency records to the public. 5 U.S.C.
11 § 552(a)(3)(A). Plaintiffs are therefore entitled to relief against DOS to enforce the Request
12 in its entirety.

13 DOJ’s Constructive Denial and Plaintiffs’ Appeal

14 51. On March 29, 2019 DOJ acknowledged receipt of Plaintiffs’ Request and
15 assigned it reference number DOJ-2019-002653. DOJ also indicated that it would need an
16 extension of time to respond to the Request “beyond the ten additional days provided by
17 statute” because responding to the Request would require a search in and/or consultation
18 with another Office. *See* Exhibit K, DOJ Extension Letter.

19 52. After hearing nothing further from DOJ for nearly three months Plaintiffs
20 sent a follow up letter on June 19, 2019. *See* Exhibit L, June 19, 2016 Follow Up Letter to
21 DOJ. In it, Plaintiffs requested an update on the status of Plaintiffs’ Request and an
22 anticipated timeline for DOJ’s response.

23 53. On June 27, 2019 DOJ emailed Plaintiffs and stated that it had not yet
24 located any records responsive to the Request and it expected that an initial search would
25 take “at least several months” to complete. DOJ indicated that it would reach out to
26 Plaintiffs again upon completion of its initial review of the material. *See* Exhibit M, June
27 27, 2019 DOJ Email.

54. Concerned about the uncertainty as to the timeline of DOJ's determination on the Request, Plaintiffs responded in writing on July 23, 2019 and again sought an anticipated timeline for DOJ's response. Plaintiffs also asked that DOJ provide determinations and responsive records on a rolling basis and identify specific requests it could prioritize. *See* Exhibit N, July 23, 2019 Letter to DOJ.

55. On July 26, 2019 DOJ indicated that its record search was "ongoing" and confirmed that it would provide interim responses to the Request as it makes disclosure determinations. *See* Exhibit O, July 26, 2019 DOJ Email.

56. As of the date of the filing of this Complaint, DOJ has provided no further information regarding the status of the Request and has made no determination the Request. Notwithstanding DOJ's "processing" of the Request, by failing to make any determination on the Request nearly six months after it was submitted, DOJ has constructively denied it.

57. Plaintiffs have therefore exhausted the applicable administrative remedies with respect to the Request under the FOIA. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(C).

58. By failing to timely respond to and constructively denying the Request in its entirety, DOJ has violated FOIA's mandate to release agency records to the public. 5 U.S.C. § 552(a)(3)(A).

59. Plaintiffs are therefore entitled to relief against DOJ to enforce the Request in its entirety.

CLAIM FOR RELIEF

Violation of the FOIA

(5 U.S.C. §§ 552(a)(3), 552(a)(4), 552 (a)(6))

60. Plaintiffs reallege and incorporate each of the foregoing allegations as if fully set forth herein.

61. Plaintiffs have a right under FOIA to obtain the specific agency records sought in the Request, and Defendants have no legal basis for their failure to promptly make the requested records and information available.

1 62. Defendants have violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly
2 release agency records in response to the FOIA Request.

3 63. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make
4 reasonable efforts to search for records responsive to the FOIA Request.

5 64. Defendants have violated 5 U.S.C. § 552(a)(3)(B)-(D) by failing to conduct
6 an adequate search of records responsive to the FOIA Request.

7 65. Defendants DOS, DOJ, the FBI (as to individual requests 4 and 5) and DHS
8 (as to revised determinations for individual requests 4, 5, and 12) have violated 5 U.S.C. §§
9 552(a)(4)(A)(iii); 552(a)(6)(A)(i) by failing to make a determination regarding Plaintiffs'
10 FOIA Request and request for a fee waiver within the governing statutory time limit.

11 66. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because
12 Defendants continue to improperly withhold agency records, in whole or in part, in
13 violation of FOIA. Plaintiffs will suffer irreparable injury from, and have no adequate
14 remedy for, Defendants' illegal withholding of government documents subject to its FOIA
15 Request.

16 67. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual
17 and justiciable controversy exists regarding Defendants' improper withholding of agency
18 records in violation of FOIA.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs herewith pray for the following relief:

- (a) For a judicial declaration confirming that Defendants' failure to disclose the records requested by Plaintiffs as alleged herein is unlawful;
- (b) For a judicial declaration confirming the Defendants' DOS, DOJ, and FBI (as to individual requests 4 and 5) constructive denial of Plaintiffs' Request is unlawful;
- (c) For injunctive relief ordering Defendants to immediately and expeditiously
 - (i) produce to Plaintiff all non-exempt responsive documents covered by Plaintiffs' FOIA Request as alleged herein, and (ii) submit a detailed descriptive index justifying Defendants' withholding of any responsive documents within fourteen calendar days of the final production, *see generally Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973);
- (d) For Plaintiff's reasonable attorney's fees and litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (e) For such other relief as the Court may deem just and proper.

Dated: October 21, 2019

Respectfully Submitted:

PILLSBURY WINTHROP SHAW PITTMAN LLP

By /s/ Thomas V. Loran III
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